



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-121534-12]

RIN 1545-BL00

Guidance for Determining Stock Ownership

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations that identify certain stock of a foreign corporation that is disregarded in calculating ownership of the foreign corporation for purposes of determining whether it is a surrogate foreign corporation. The temporary regulations also provide guidance with respect to the effect of transfers of stock of a foreign corporation after the foreign corporation has acquired substantially all of the properties of a domestic corporation or of a trade or business of a domestic partnership. These regulations affect certain domestic corporations and partnerships (and certain parties related thereto), and foreign corporations that acquire substantially all of the properties of such domestic corporations or of the trades or businesses of such domestic partnerships. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

DATES: Comments and requests for a public hearing must be received by **INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-121534-12), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-121534-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-121534-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David A. Levine, (202) 317-6937; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874 of the Internal Revenue Code. The temporary regulations identify certain stock of a foreign corporation that is not taken into account for purposes of calculating the ownership percentage described in section 7874(a)(2)(B)(ii), and also address the effect of certain transfers of stock of a foreign corporation that occur after the acquisition described in section 7874(a)(2)(B)(i). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these amendments.

## **Special Analyses**

It has been determined that that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Given the complexity and cost of a transaction to which these regulations may apply, the IRS and the Treasury Department anticipate that these regulations primarily will affect large domestic corporations and partnerships and their shareholders and partners. Although small entities could be shareholders or partners of a larger domestic corporation or partnership involved in a transaction affected by the regulations, the IRS and the Treasury Department do not anticipate the number of these shareholders or partners to be substantial. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be

scheduled if requested in writing by any person who timely submits written comments.

If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these regulations are David A. Levine of the Office of Associate Chief Counsel (International) and Mary W. Lyons, formerly of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805\* \* \*

Section 1.7874-4 also issued under 26 U.S.C. 7874(c)(6) and (g).

Section 1.7874-5 also issued under 26 U.S.C. 7874(c)(6) and (g).

Par. 2. Section 1.7874-4 is added to read as follows:

#### **§1.7874-4 Disregard of certain stock related to the acquisition.**

[The text of proposed §1.7874-4(a) through (k) is the same as the text of §1.7874-4T(a) through (k) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.7874-5 is added to read as follows:

§1.7874-5 Effect of certain transfers of stock related to the acquisition.

[The text of proposed §1.7874-5(a) through (c) is the same as the text of §1.7874-5T(a) through (c) published elsewhere in this issue of the **Federal Register**].

John Dalrymple  
Deputy Commissioner for Services and Enforcement.

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